



September 28, 1999

Mr. John Steiner
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR-2726

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#128857.

The City of Austin (the "city") received a request for information regarding a facility operated by Austin Liquid Disposal, Inc. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

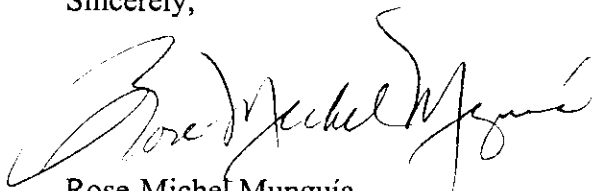
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). You state that the requested information relates to pending litigation in which the city has filed a proof of claim for wastewater surcharges against Austin Liquid Disposal, Inc.'s Chapter 11 bankruptcy filed in the U.S. Bankruptcy Court. In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records therefore may be withheld from public disclosure.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, 352.

In light of our conclusion under section 552.103(a), we need not address your other claims. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM\nc

Ref: ID# 128857

Encl: Submitted documents

cc: Ms. Kathryn Robinson
P.O. Box 155092
Irving, Texas 75015-5092
(w/o enclosures)